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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 22nd May 1953

S.R.O. 1034.—WHEREAS the election of Shri Chandra Bhan Gupta as a member of the Legislative Assembly of the State of Uttar Pradesh, from the Lucknow City (East) Constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Radhey Shyam Sharma son of Shri Ram Dayal Sharma, resident of B 21/18 Kamacha, Banaras;

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of section 86 of the said Act for the trial of the said petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Election Commission;

NOW THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL AT LUCKNOW

ELECTION PETITION No. 256 OF 1952

Sri N. S. Lokur—*Chairman.*

Sri S. N. Mitra—*Member.*

Sri Azizul Haque Fakhruddin—*Member.*

Radhey Shyam Sharma—*Petitioner.*

Versus

1. Hon'ble Sri Chandra Bhanu Gupta
2. Sri Brij Kishen Agha
3. Sri Sita Ram Singh
4. Sri Devendra Pratap Joshi
5. Sri Kishori Lal
6. Sri Kanhaiya Lal
7. Kumari E. F. Wheeler
8. Sri Krishna Gopal Kalantri
9. Sri S. N. Bose
10. Sri Bhrigu Dutt
11. Sri Shri Narain Vidyarthi

or 8th of May. He may have seen the family there, but he says that some were coming to stay there and some were going away. He does not know who was ill in that family. We do not think it safe to attach much importance to his testimony.

Fakir Mohamed, the Chowkidar of the Dak Bunglow, is called to produce the Register wherein the arrival and departure of the visitors are noted. But as the entries in it are not proved, his evidence is of no use.

Ayodhya Prasad, the owner of the house is Banaras in which the petitioner was living, deposes that he had gone to see the petitioner on 1st May 1952 to request him to vacate the house, but his portion of the house was locked and he was not there till the second or third week of July. He says that he had let out his house to K. C. Khanna, and a portion of it was occupied by the petitioner. Khanna was the tenant to whom the house was let out, and the petitioner was allowed by him to occupy a portion of the house. The witness himself was living in a hired house, and as his landlord applied for permission to file an eviction suit against him, he wanted Khanna to vacate and give accommodation to him. There was no privity of contract between him and the petitioner and he was pressing Khanna to write to the petitioner to vacate the portion occupied by him. It may be true, but it does not prove that the petitioner had gone to Bhimtal on 1st May. Even the respondent's witness Hargovind Singh says that the petitioner's family went to live in the other half of the house at Bhimtal only on 7th or 8th of May. The University, where the petitioner is a Professor, was closed only on 1st May, and no other witness says that he left with his family on that very day. This witness does not prove anything beyond that he did not meet the petitioner when he went to his residence. That is not enough to prove that he had gone to Bhimtal.

As against this negative evidence, the petitioner has adduced positive evidence to prove his presence in Banaras on the 3rd and the 22nd of May and thereafter on the 8th of July. On those days he withdrew from the Imperial Bank of India at Banaras Rs. 500, Rs. 200 and Rs. 300 respectively. The Bank clerk Lakshminath Gupta has produced the relevant withdrawal form and the cheques. The witness says that whenever any amount is paid in cash, the payee's signature is taken on the back, and on all the three documents the petitioner alone has signed on the back, showing that he personally received the amounts.

Dr. Faridi, a leading medical practitioner at Lucknow, says that about the last week of May the petitioner and his wife had taken their baby to him for being treated for Marasmus (weakness and diarrhoea). It is true that this witness was the petitioner's polling agent at the last election, and is admittedly a friend of the petitioner. He has no documentary evidence to show when he treated the child, but in view of the evidence of the Bank clerk, Dr. Faridi's evidence is immaterial.

Respondent No. 1 has failed to prove that the petitioner was in Bhimtal at the material time, namely from the 7th to the 10th of May, and as he withdrew money from the Imperial Bank of India at Banaras on the 3rd and the 22nd of May, we are inclined to believe his statement that he sent his wife to Bhimtal on the 24th of May and that he himself did not go there till the 7th of June.

Thus the attempt to prove that the petitioner was far away from Lucknow when his petition was typed at Lucknow and presented at Delhi has failed. But the petitioner admits that on both these occasions he was at Banaras, as his son was ailing. In fact it appears that the Kisan Mazdoor Praja Party had put up the petitioner as its candidate for the election and it is the party which is taking an active part in this litigation. The petitioner admits that both he and the party are financing it; but it is evident that the brunt of the expenses is borne by the party. The petitioner's return of his election expenses shows that out of Rs. 2,900 spent, he contributed only Rs. 100 and the remaining Rs. 2,800 were paid by the Kisan Mazdoor Praja Party. The petitioner says that Sheonarain Lal Saxena is a whole time officer of the Kisan Mazdoor Praja Party and Bhattacharya is occasionally called to work there. It was they who got the petitioner's election petition typed at Lucknow and it was Sheonarain Lal who took it to Delhi and presented it to the Election Commission on 10th May. They and the typist who typed the petition would have been the best witnesses to state whether or not the petition was typed on sheets of paper which had already been signed by the petitioner. But the petitioner has chosen not to examine any of them, and is not prepared even to disclose the name of the typist who typed his petition and the schedules.

In these circumstances a bold attempt was made on behalf of respondent No.1 to trace the typist who typed the petition. With the permission of the Tribunal, photographs were taken of each of the twenty six pages of the petition and the schedules accompaying it, and when they were shown to Brindavan Tiwari, the

typist attached to the Civil Courts in Lucknow, by Ramnarain Pande, the Private Secretary of respondent No.1, he is said to have offered to give evidence if summoned. Accordingly a summons was sent to him and he was put into the witness box. He says that he typed the body of the petition and the verification, pages 1 to 14, on his Remington No. 16 typewriter, in the house of Bishun Singh, Advocate, partly on the 7th and partly on the 8th of May, on sheets of paper which already bore the signatures of the petitioner and were supplied to him by Sheonarain Lal. A draft of the petition was given to him by some one and he had to fit in the matter on those signed sheets of paper. He made twelve carbon copies at the same time and handed over all the thirteen copies. He was paid his fees by Trilok Singh, the brother of Bishun Singh. He says that the schedules, pages 15 to 26, were not typed by him. He was asked to bring the typewriter on which he claims to have typed the petition. He brought it and typed in Court the 1st page and a portion of the 10th page of the petition. Even a cursory glance is enough to show that the type of the petition is different from and larger than the type of the typewriter produced by the witness. The witness says—

> "The size of the type of the petition appears to be bigger than that of the copy I made yesterday on my Remington No. 16, but in fact it is not so. It appears so as it was typed with an old ribbon which was soaked in kerosene. It is true that in the original petition, the words typed have occupied longer spaces than the same words in the copy I made yesterday on my Remington No. 16. As I have got the typewriter repaired, it has become tighter and so the words take less space".

On the face of it this explanation is far from satisfactory. He was obviously misled by the photo copies of the petition which were shown to him by Ramnarain Pande, the Private Secretary of respondent No. 1. Those copies being of cabinet size—less than half the size of the sheets of the petition,—the letters in it are naturally smaller in size, and the witness thought that the petition must have been typed on a Remington No. 16. When he was given the original in Court for being typed, he saw his error, and felt uneasy. His cross-examination was adjourned and on the next day he came prepared to offer an explanation that he had used an old and oiled ribbon. He says—

> "As it struck me yesterday on typing the two pages from the petition that the letters looked different, I brought with me an old ribbon to demonstrate that it would have types similar to those in the petition."

He was asked to demonstrate it. So he typed out the first page of the petition with his old ribbon, but with no better result. Even then every word in the petition occupied a longer space than the same word in the paper on which it was typed with the old ribbon on Remington No. 16. Then in re-examination, the witness says that the centre guide was loose when he typed the petition, but he cannot loosen it now to give a demonstration. On a careful examination, we find that the type of the petition is quite different both in shape and size from that of Remington No. 16, and we are satisfied that the petition was not typed on it. Nothing more need be said about this witness, and the learned advocate for respondent No. 1 rightly did not rely upon his evidence during his arguments.

The oral evidence of the witnesses having thus proved to be of little assistance to us in deciding the issue, we will proceed to consider what is disclosed by a close examination of the petition itself, and the schedules accompanying it, in the light of the petitioner's deposition. The position of his signatures on the various schedules accompanying the petition is very eloquent and shows beyond doubt that they were not intended for varifying the schedules. On two of the schedules. Nos. 7 and 9, the signatures appear at the bottom on the right side, in the same way as they appear on pages 13 and 14 of the petition. The whole of page 14 is taken up with only 13 lines of the verification of the petition, while page 13 contains forty lines. The verification on page 14 could have been typed on the upper half of the page easily and the petitioner's signature could have been made in the middle of the page. Schedule No. 9 contains only three lines, yet the signature is at the bottom, and as the verification had to be written just above the signature, a gap was left where a vertical line is drawn. It is the same with schedule No. 7. In the remaining seven schedules the signatures appears in the left hand corner in the margin, corresponding to similar signatures on pages 1 to 12 of the petition. Signatures are made in the margin to authenticate the page, and not by way of execution. On the four pages, Nos. 13, 14, 21 and 26, the signatures were evidently intended to denote execution, and below these signatures the petitioner wrote in his own handwriting the word "petitioner". He did

Shri Sinha, for the petitioner, cited numerous cases where a plaint in a civil suit, not properly signed or verified by the plaintiff, was allowed to be amended by a proper signature and verification, even after the period of limitation had expired; (Ali Muhamad Khan *v* Ishaq Ali Khan., I.L.R. 54 ALL 57 F.B.; Raman Lalji *v* Gokul Nathji, I.L.R. 39 ALL 343; Piare Lal *v*. Bhagwan Das, I.L.R. 55 ALL 216; Qunayat Husain *v* Sajidunniss Bibi AIR 1949 ALL. 499 and Subbiah Pillai *v* Sankarapandian Pillai AIR 1950 MAD. 369). The whole law on the subject was fully considered in the comprehensive judgment of Bhagawati, J., in Prince Line *v* Trustees of Port, Bombay (A.I.R. 1950 Bom. 130) where it is thus summed up—

> "The position therefore which emerges on these authorities is that the Court has always got the discretion if a plaint is not properly presented or is not signed and verified in accordance with the provisions of O. 6, R.14 and O. 6 R.15, Civil P.C., to allow the plaintiff to remedy the defect at a later stage even though the period of limitation may already have expired. But that is a matter of the discretion of the Court which the Court exercises after due consideration of all the facts, and circumstances of the case before it. If after a due deliberation of all these facts, the Court comes to the conclusion that it is just that, in the exercise of its discretion, it should allow the defect to be cured it can do so irrespective of the fact that the defendant has vested in him by that time a right to plead the bar of limitation. But where while granting the amendment or the opportunity to the plaintiff to cure the defect, the Court reserves unto the defendant, the right to plead the bar of limitation, the position in my opinion would be quite different. In such a case the defendant would not be deprived of his right to plead the bar of limitation and the plaintiff would have to meet that point when properly raised by the defendant at any subsequent stage."

The same principle was applied to an election petition by a Division Bench of the Bombay High Court in Sitaram Hirachand Birla *v* Yograjsingh Shankarsing (Special Civil Appn. No. 2017 of 1952, decided on 19th December 1952). That case arose out of Election Petition No. 72 of 1952 (reported on page 286 of Part II of the *Gazette of India Extraordinary*, dated 5th February, 1953). In that case the petition was accompained by a verified list of the particulars of the alleged corrupt practice, but the verification was defective and the particulars were not full. The petitioner's application to amend them was allowed by the Tribunal.

The reason given was:—

> "So far as the verfication and the particulars of the list are concerned, the amendment sought is not of a substantial nature but only of a formal character more or less in the nature of simplification of the original verification and the list."

In distinguishing it from the decision in Election Petition No. 83 of 1952 (reported on p. 2263 of the *Gazette of India Extraordinary*, Part I, dated 10th October 1952) where the petitioner was not allowed to amend the petition by supplying verification to the list, the Tribunal observed:—

> "It was a case of absence of verification at the foot of the list and consequently the Tribunal held that there was non-compliance of Section 83(2) of the Act. But the petition before us is not a case of absence of verification both in regard to the petition or the list."

The respondent, who was the successful candidate at the election, then applied to the High Court at Bombay for a suitable writ under articles 226 and 227 of the Constitution of India, directing the Tribunal to dismiss the petition. In a well-considered judgment, Chagla, C.J., held that the Tribunal had jurisdiction to allow the amendment, and refused to issue any writ. It is not necessary to differ from that decision as the case we are dealing with falls under the first category, as we have held that there is a total absence of verification at the foot of the lists. The judgment of the learned Chief Justice, however, does not pointedly refer to the distinction pointed out by the Tribunal, but is based on the general and wide powers of amendment which a civil court possesses and which are conferred upon the Election Tribunal by sub-section (2) of Section 90 of the Act. That sub-section says:—

> "Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the Tribunal, as nearly as may be, in accordance with the procedure applicable under the Code on Civil Procedure, 1908 (Act V of 1908), to the trial of suits."

It is thus clear that the application of the procedure under the Civil Procedure Code, 1908, to trials before an Election Tribunal is subject to the provisions of the Act and of the rules thereunder; and the scheme of the Act shows that an Election Tribunal cannot exercise the wide powers of amendment conferred by the Code upon a Civil Court. Section 83 of the Act provides—

"(1) An election petition shall contain a concise statement of the material facts on which the petitioner relies and shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (Act V of 1908), for the verification of pleadings.

(2) The petition shall be accompanied by a list signed and verified in like manner setting forth full particulars of any corrupt or illegal practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the commission of each such practice."

Section 80 of the Act says

"No election shall be called in question except by an election petition presented in accordance with the provisions of this Part."

This wording is more peremptory than the wording of O. IV R. 1 of the Civil Procedure Code, 1908, which says:—

(1) Every suit shall be instituted by presenting a plaint to the Court or such officer as it appoints in this behalf.

(2) Every plaint shall comply with the rules contained in Order VI and VII, so far as they are applicable.

In the code no penalty is expressly prescribed if a plaint does not comply with the rules contained in O.VI and O.VII, which include the necessity of verification of pleadings (O.VI R.15). A plaint can be rejected on the four grounds specified in O.VII R.11, which do not include the absence of or defect in verification, and it has been held in several cases that a Court has no power to reject a plaint merely because it is defective in that it does not comply with some provisions of law. On the other hand, S.85 of the Act provides that if the provisions of Sections 81 and 83 are not complied with the Election Commission shall dismiss the petition. The provision is mandatory and gives no option to the Election Commission to allow an amendment. If the defect of want of full particulars in the list escapes the notice of the Election Commission and the petition is sent to an Election Tribunal, then sub-section (3) of S.83 empowers the Tribunal to allow the particulars in the list to be amended or further and better particulars to be supplied. This may be compared with the wording of O.VI R.17 of the Code which confers very wide powers of amendment on a Civil Court. It says:—

"The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties."

Had the Election Tribunal the same powers to allow an amendment as are possessed by the Civil Court, then sub-section (3) of Section 83 of the Act, restricting the powers to allow amendment, would be out of place. Hence in the case of an election petition and the list accompanying it, the absence of verification is not a mere irregularity as in the case of the pleadings in a civil court and with all respect to the learned Chief Justice, we are inclined to hold that we have no power to allow the defect to be cured by the addition of the petitioner's signature and verification to a list prepared by another, or by the production of a new list duly signed and verified, especially after the time for the presentation of the petition before the Election Commission has passed.

The "powers" of a Court or a Tribunal are to be distinguished from the "procedure" that is to say, the steps to be taken for the exercise of those powers (*vide* Mozley and Whiteley's Law Dictionary, 4th edition, p. 243). This distinction is pointedly brought out by the heading of S.92 of the Act as "Powers of the Tribunal" and that of S.90 as "Procedure before the Tribunal". The Code of Civil Procedure, 1908 confers upon a Civil court certain powers required for the proper conduct of the proceedings before it, and also defines the mode of exercising those powers. In the Representation of the People Act 1951 the powers are specified, and for the mode of exercising them the procedure laid down in the Code of Civil Procedure 1908, is to be followed subject to the provisions of the Act and the rules made thereunder. A comparison of Orders XI, XVI to XIX

and XXVI of the Code with the various clauses of Section 92 of the Act will show how the powers given to a civil court by the former are specifically conferred by the Act upon an Election Tribunal. The power to direct a party to appear in person is given by the Proviso to Section 91 and to order the payment of the costs by Section 99(1) (b) of the Act. Some of the powers of the Civil court are conferred upon the Election Tribunal in a qualified manner, as in the case of withdrawal of an election petition (Chapter IV) and the amendment of the list accompanying an election petition (sub-section 3 of S.83). If the word "procedure" used in S.90 of the Act was intended to include the "powers" also, then there was no need to confer those upon the Tribunal by a categorical enumeration. The obvious intention of the Legislature is to define the powers of an Election Tribunal specifically, and to allow it to follow the procedure laid down in the Civil Procedure Code, 1908, in order to exercise those powers. An Election Tribunal cannot claim to possess powers not conferred upon it specifically by the Statute whereby it has been constituted.

It is a sound principle of natural justice that the success of a candidate who has won at an election should not be lightly interfered with, and any petition seeking such interference must strictly conform to the requirements of the law. It is this principle which underlies the provisions of S. 85 of the Representation of the People Act, 1950, which enjoins the Election Commission to dismiss a petition which does not comply with the provisions of sections 81 and 83 of the Act which lay down how an election petition should be presented, and what its contents should be. No discretion is given to the Election Commission to condone the non-compliance with those provisions. In this connection, we may quote the following pertinent passage from p. 263 of Abraham's New York Election Law, which contains similar provisions regarding the necessity of verification of an election petition:—

> "An election contest is not an action at law or a suit in equity, but is purely a statutory proceeding unknown to the common law. The Court possesses no common law powers. Such statutory provisions are special and summary in their nature. Therefore, as a general rule, a strict observance of the Statute is required, so far as regards the steps necessary to give jurisdiction."

Again at p. 303.

> "The statutory requirement of Election Law, S. 335, must be strictly observed. The statute in part commands 'A special proceeding..... shall be heard upon a verified petition and such oral or written proof as may be offered'. The authority vested in the court to relieve of mistake or error is never exercised in relation to an unverified petition..... The failure to verify a judicial petition was held to be a jurisdictional defect affecting the validity of the petition..... The consequences which result in the omission of properly verified pleadings are far-reaching. The discovery, when observed, usually deprives the Court to direct the correction, since such an order would violate the time requirement for the institution of legal proceedings."

Our attention is drawn to the fact that in the case of the election petition of Shri Dutt, the Assistant Secretary to the Election Commission gave a notice to him calling his attention to the absence of verification at the foot of the list accompanying his petition as required by sub-section (2) of Section 83 of the Act, and calling upon him to make good the deficiency within fifteen days, failing which his petition would be dismissed under S. 85. That notice is published on p. 908 of the U.P. Government Gazette, Part I-C, dated 8th November, 1952. If the defect was removed, the petition could be treated as presented on the day it was removed, and if the petitioner satisfied the Election Commission that sufficient cause existed for his failure to present the petition in proper form within the period prescribed therefor, the Election Commission might in its discretion condone such failure under the proviso to S. 85 of the Act, In order to make this clear, the said notice specifically stated at the end—

> "This letter is to be read without prejudice to the provisions of law applicable to the case."

The preliminary issues in that case were decided only on 17th March, 1953, and the decision has not yet been published, but we have seen a certified copy of it.

The decision is by a majority, the two Members of the Tribunal, the Chairman having differed from them. According to the judgment of the majority, the petition could not be thrown out for two reasons, namely that the fact that after the petitioner supplied duly verified lists as called for, the Commission appointed a Tribunal for trying it, shows that the delay in the production of the list was condoned under the proviso to Section 85, and that even otherwise the lists having been mentioned in the petition, the verification of the petition amounted to a verification of the lists also. We are not concerned with the first ground, since the lists in this case were not even subsequently verified properly before the Election Commission. As regards the second ground, with all respect, we differ from the view taken by the majority and prefer to accept the view of the Chairman which is in consonance with the clear wording of S. 83(2) of the Act.

Assuming that we have power to permit the petitioner to amend the lists by adding his signature and verification to them, still as pointed out by Bhagwati, J., in Prince line's case cited above, unless we expressly excuse the delay, the respondents would not be deprived of their right to plead the bar of limitation, and in this case we see no reason to excuse the delay.

Shri Sinha, the learned Advocate for the petitioner, urges that when an election petition is filed, it is in the public interest that it should be heard and disposed of on its merits, and should not be throttled by reason of any technical defect. He points out that even if the petitioner wants to withdraw it, he can do so only with permission, and even then others are to be given an opportunity to continue the petition (SS. 108 to 110 of the Act). This is true in the case of a properly presented petition, but if the petition itself is fatally defective, there is no valid petition and the question of its being continued does not arise.

It is true that section 85 of the Act peremptorily requires the Election Commission to dismiss a petition which does not comply with the provisions of SS. 81, 83 and 117 and even if he does not do so, sub-section (4) of Section 90 says that the Tribunal may do so. This may be interpreted as enabling us to hear the petition on its merits, even though it does not comply with the provisions of Sections 81, 83 and 117, but we cannot do so unless we excuse the delay and allow the lists to be duly verified, since S. 80 provides that no election shall be called in question except by an election petition presented in accordance with the provisions of Sections 81 to 84.

Permitting the petitioner to cure the defect of want of verification, after excusing the delay, is an equitable relief, and "AEQUITAS NON MEDETUR DEFECTU EORUM QUAE JURE POSITIVO REQUISITA ALIUM". "Equity does not supply the deficiency of those things which are required by positive law" (Morgan, Legal Maxims). Moreover, he who seeks equity must come with clean hands, but the petitioner has all along been trying to bluff and deceive us into the belief that he made his signatures after the schedules were typed and the verification was written out. Had he told the truth and frankly disclosed the circumstances under which he made his signatures on blank sheets of paper, we might perhaps have been induced to consider his application for amendment sympathetically. But having successfully got through the summary scrutiny of his petition by the Election Commission he hoped to succeed here also by concealing the true facts. Hence no application for amendment was made until we announced our conclusions regarding the signatures and the verification. In these circumstances, we are not prepared to put a premium upon fraud by condoning the absence of signed and verified lists required by sub-section (2) of Section 83 of the Act to accompany the petition or permit them to be supplied at this late stage. Although section 85 of the Act says that if the provisions of Sections 81, 83 or 117 are not complied with, the Election Commission shall dismiss the petition, yet sub-section (4) of Section 95 says that notwithstanding anything contained in Section 85, the Tribunal may dismiss such a petition. So we have a discretion to dismiss the petition wholly or to proceed with it ignoring the grounds of corrupt and illegal practices about which the list required by sub-section (3) of Section 83 is not furnished with the petition. Election Petitions Nos. 199 and 269 of 1952 (reported on pages 125 and 173 of the *Gazette of India Extraordinary*, Part I dated 17th and 20th January 1953 respectively) were wholly dismissed for want of duly signed and verified lists, though the petitions contained some other grounds besides illegal and corrupt practices. But we think it fair that only those grounds should be shut out which cannot be urged owing to lack of the necessary lists and in our discretion we allow the petition to be proceeded with on the remaining grounds.

Scrutinizing the petition from this point of view, we find that all the grounds set out in it, except those in paragraph 8 are based on corrupt or illegal practices, as the following analysis will show:—

Paragraph	Ground	What kind of corrupt practice	Under what section
4 I . .	Bribery	Major .	S. 123 (1)
4 II . .	Hiring vehicles	Major .	S. 123 (6)
4 III & 4 IV	Taking assistance of government servants	Major .	S. 123 (8)
4 V . .	Appeal to Muslim voters on religious grounds.	Minor .	S. 124 (5)
4 VI . .	Appeal to Sikh voters	Minor .	S. 124 (5)
4 VII . .	Appeal to Parsi voters	Minor .	S. 124 (5)
4 VIII . .	Appeal by using the national flag . .	Minor .	S. 124 (5)
5 (*a*) . .	False return of election expenses . .	Minor .	S. 124 (4)
5 (*b*) . .	Employment of workers on payment .	Major .	S. 123 (7)
5 (*c*) . .	Omitting to show in the return of election expenses several items.	Minor .	S. 124 (4)
6 . . .	Publishing false statements relating to petitioner.	Major .	S. 123 (5)
7 . .	Issuing posters, etc. without the name the printer and publisher.	Illegal .	S. 125 (3)
9 . . .	Impersonation by reason of non-user of indelible ink.	Major .	S.123 (3) and Rule 20.
10 . . .	Dominating influence on voters as their feet and head could be seen from the polling booth.	Major .	S. 123 (2) and Rule 18.
11 . . .	Incurring of expenditure in contravention of the Act of Rules.	Major .	S. 123 (7), S 77 and Rule 117 & Sch. V.
12 . . .	The above acts done without the connivance of respondent No. 1	Minor .	S. 124 (1)

Thus the grounds set out in paragraphs 1 to 7 and 9 to 12 fall within the categories of corrupt or illegal practices and in the absence of the lists required by sub-section (2) of Section 83 of the Act, all these grounds have to be left out of consideration. The only ground that remains is what is stated in paragraph 8, namely that the ballot boxes were such that ballot papers could be taken out or inserted in without the seals being broken, that they were also tampered with and that the Returning Officer did not comply with the provisions contained in Rule 21 of the Rules. If this ground is proved to have materially affected the the result of the election, then the election of respondent No. 1 will have to be declared void under S. 100(2)(c) of the Act. Hence issues will now be framed

only with regard to the ground contained in paragraph 8 of the petition and further hearing of the petition on those issues will be proceeded with.

Thus our findings on the five preliminary issues are:

Issue No. 1.—In the negative.

Issue No. 2.—Does not survive.

Issue No. 3.—The petition is duly signed and verified, but not the schedules accompanying it.

Issue No. 4.—The grounds relating to corrupt and allegal practices should be left out of consideration.

Issue No. 5.—The trial of the petition should be confined to the ground contained in paragraph 8 only and should be proceeded with.

(Sd.) N. S. LOKUR, *Chairman.*

(Sd.) S. N. MITRA, *Member.*

(Sd.) AZIZUL HAQUE FAKHRUDDIN, *Member.*

LUCKNOW;

The 21st March 1953.

The following additional issues were framed for decision namely:—

6. Were the ballot boxes such that ballot papers could be taken out or inserted in without the seals being broken, and were any of them tampered with?

7. Has this irregularity, if proved, materially affected the result of the election

8. What orders?

The learned advocate for the petitioner intimated to us that his client wanted to apply for a transfer of the case and he was given time till to-day for bringing a stay order or to be ready with the evidence on the above issues. The case was then adjourned till to-day.

Shri Misra, who appeared for the petitioner to-day, stated that an application for transfer was presented to the Election Commission only day before yesterday. He could give no satisfactory explanation for this delay and he also stated that no application for stay of proceedings had been made. We asked him whether he would ask for an adjournment, but he stated that he had no instructions to apply for or even to request an adjournment. He had no instructions to adduce any evidence or to proceed with the case. In these circumstances, the only course for us is to record findings against the petitioner on issues Nos. 6 and 7 and order the dismissal of the petition. A good deal of evidence was led on behalf of both the sides and in view of all the circumstances we think that respondent No. 1 ought to get Rs. 500 for his costs.

We dismiss the petition and order the petitioner to pay Rs. 500 (Rupees Five Hundred Only) as costs to respondent No. 1. Other respondents shall bear their own costs.

(Sd.) N. S. LOKUR, *Chairman.*

(Sd.) S. N. MITRA, *Member.*

(Sd.) AZIZUL HAQUE FAKHRUDDIN, *Member.*

LUCKNOW;

The 18th April, 1953

[No. 19/256/52-Elec.III/7484.]

By Order,

P. R. KRISHNAMURTHY, Asstt. Secy

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